

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of	)	
Implementation of Section 621(a)(1) of	)	
the Cable Communications Policy Act of 1984	)	MB Docket No. 05-
311		
as amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

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**COMMENTS OF FORT WORTH, TEXAS**

These Comments are filed by the City of Fort Worth, Texas in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Although the State of Texas has changed the method in which cable and video provider franchises are granted, the City of Fort Worth believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

**Cable Franchising in Our Community**

**Community Information**

Fort Worth, Texas is a city with a population of 620,000. Our franchised cable providers are Charter Communications, Millennium OneSource, Strategic Technologies Inc, Verizon and TeleCom Satellite Systems Corp d/b/a Optel. A franchise with Wild Open West (WOW) was granted but construction was never started due to company financial constraints and the franchise was terminated in 2005. Our community has negotiated cable franchises since 1981.

**Our Current Franchises**

The City of Fort Worth has not hindered, burdened or refused to grant a cable television franchise to a qualified applicant. The City has welcomed any qualified cable television provider wishing to provide service in our community to apply for a franchise, even granting franchises for limited areas of operation. Every cable franchise negotiated by the City of Fort Worth, from the first one granted in 1981 to the last in 2002 includes a form of this non-exclusive clause:

“This grant for use of City streets, sidewalks and other public easements is nonexclusive and does not establish priority for use over other franchise holders, permit holders and the City’s own use of public property.”

### **Current Providers**

Our current citywide franchise began in 1981 when it was issued to Sammons of Fort Worth. The franchise was transferred to Marcus Cable in 1995, then to Charter Communications in 1999. The franchise expires on August 11, 2006. Under the statutory timeline prescribed under section 626 of the Federal Cable Act, the City of Fort Worth and Charter Communications prepared for a franchise renewal. Public meetings were held, community needs were determined and a Request for Renewal Proposal was presented to the incumbent provider on September 20, 2005.

During the second called special session of the 2005 Texas state legislature, legislation was passed that revoked municipal franchising rights and granted franchising authority to the state Public Utilities Commission. As a result of this change in law, we have not started negotiations for a franchise renewal with the incumbent provider, but are waiting for the current franchise to expire and a state issued certificate of franchise to be issued.

Optel (Telecom Satellite Systems Corp.) was granted a limited area franchise by the City of Fort Worth in 1991. Optel serves seven apartment complexes in Fort Worth. Optel transmits its signal via satellite and does not operate a head end within the city. Optel use of public right of way is extremely limited. Optel is not required to provide PEG channels or Institutional Network capability. The Optel franchise was to expire in 2001 but is still operational on a month-to-month franchise.

Millennium OneSource was granted a limited area franchise in 1999. The franchise was to expire August 30, 2006 but under the forty (40) percent penetration clause under current state law, OneSource was allowed to cancel their existing franchise and apply for a state issued certificate of franchise.

The City of Fort Worth granted a citywide franchise to Wild Open West (WOW) in 2000. Construction of the system was not started due to the downturn of the stock market in the early 2000's. In an effort to establish citywide competition in the marketplace, the franchise construction timeframe was granted a five (5) year extension. The franchise was terminated in 2005 for failure to start construction.

The City of Fort Worth granted a limited area franchise to Strategic Technologies Inc in 2002. The franchise is set to expire in 2023. Under the new state law, Strategic Technologies must continue to operate under the municipal franchise until expiration.

Verizon Communications met with the City in June 2004 to discuss franchising their new FTTH system. Negotiation broke off after the new Texas statewide certificate of franchise law was passed.\*<sup>(1)</sup>

Our current municipal and state franchises require all cable operators to pay a franchise fee to the City in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operators (with the exception of Optel) to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel devoted to public access; two channels devoted to educational access; and two channels devoted to government access. Fiber is used to transport the television signal between the P.E.G. channel source and the cable provider head end. The holder of a state-issued certificate of franchise is responsible for providing the connectivity to each PEG-access channel distribution point up to the first 200 feet.

Our franchises require that our PEG channels be supported by a one (\$1) dollar per subscriber, per month PEG fee. This fee is used for both operational and capital expenditures, as per a 1988 agreement in which the original cable provider requested the City take over operation of all local access channel franchise requirements. The City and school systems now produce all local programs aired on these Public, Educational and Governmental channels. The City's Cable Communications office also oversees the Public Access channel. Thousands of hours of original, non-character generated local programming is available to the citizens of Fort Worth through these five PEG channels. Newer citywide and limited area franchises were required to provide equal channel capacity and funding to keep a level playing field.

\*<sup>(1)</sup> Timeline of Verizon franchise negotiation with the City of Fort Worth, TX.

- Mid June 2004, Verizon met with City staff to demonstrate new FTTP video system and request franchise. Verizon was requested to submit a draft franchise agreement based on current municipal limited franchises. City provided copy of a current limited franchise to be used as a template. July 28, 2004 meeting scheduled to discuss draft franchise.
- Late September 2004, Verizon submitted their first draft franchise agreement to the City of Fort Worth. Draft does not match City limited franchise format.
- Mid October 2004, Verizon requested meeting to discuss draft franchise. Due to complex differences between Title II and Title VI regulations, an outside counsel was hired to assist the City with negotiations.
- Early November 2004, outside counsel reviewed draft franchise.
- Mid November 2004, City repeats request for Verizon to submit a redline draft using City limited franchise as a template. Verizon contacted City outside counsel to set up meeting. December meeting was scheduled.
- Early December 2004, face-to-face discussion of the draft franchise agreement was held. Verizon was asked to submit a redline draft of the franchise agreement.
- January 2005, the City lost contact with Verizon at the start of 2005 while the Texas legislature was in session. Legislation to create a state-issued certificate of franchise for cable/video providers was introduced in the state legislature but failed during the regular session.
- Mid April 2005, Verizon reestablished contact with the City of Fort Worth. Verizon submitted a revised redline draft of the franchise agreement.
- June 2005, conference call negotiations started after the regular Texas legislative session closed on 5/31/05. Negotiations lasted through July 21, 2005. City requested a final redline draft was from Verizon. Texas Governor called first special legislative session June 21, 2005, second special session on July 21, 2005.
- July 22, 2005 contact with Verizon was lost during the second state special legislative session. The current telecommunications legislation was passed during the second called special session and signed into law on September 7, 2005. Verizon was issued a certificate for franchise by the state PUC.

Institutional Network capability is spelled out in the franchises:

“the provision of usable bandwidth capacity to I-NET Users through fiber optic lines for applications including, but not limited to, (i) two-way dedicated voice, data, video and telephony channels connecting and interconnecting facilities owned, leased or used by the City, schools, counties, road commissions or other units of state or local government; (ii) computerized traffic control systems for coordinated traffic control on an area-wide basis; (iii) Supervisory Control and Data Acquisition (SCADA) systems for municipally owned water, sewer, gas and electric systems (including street lighting systems); (iv) interconnection of facilities serving police, fire and other public safety systems; (v) interconnection of libraries and other government buildings for the one-way or two-way interchange of video signals; and (vi) local area networks or wide-area networks connecting governmental buildings, such as for geographical informational systems purposes.”

These fiber optic cable connections give cities and schools the capability to transmit data between facilities, intra-office phone service, GIS guidance to emergency vehicles, 911 Emergency phone operations and traffic monitoring and signal control. Free or reduced rates cable television and Internet connections to

municipal buildings, public libraries and public schools help educate children and the general public.

Our current and previous municipal franchises contain specific Customer Service requirements dealing with:

- Telephone service standards
- Office/Home deliver-pickup
- Installation Standards
- Installation/Service Call availability and appointment windows
- Service interruption repair timelines
- Log of Complaints
- Billing
- Refunds and Credits
- Late payment and late charges
- Disconnection of service
- Truth in Advertising
- Compliance reports
- FCC Technical Standards
- Company Ombudsman
- Emergency Alert Systems
- Service availability and Line Extension formulas

Over the past five years, the City of Fort Worth has received over 1800 subscriber complaints dealing with Charter Communications noncompliance of these customer service requirements. The City assessed liquidated damages against Charter for failure to comply with customer service requirements. Starting August 12, 2006, Charter Communications will provide service under the new state-issued certificate of franchise. Customer Service requirements, local Emergency Alert systems, controlled rate hikes, build-out, system rebuild and upgrade requirements have all been removed from the Texas statute. Lawmakers are convinced that additional competition between providers will provide the incentive for cable providers to deal positively with these issues.

### **Conclusion**

The City of Fort Worth, Texas no longer has the authority to issue cable television or video franchises. Under state law SB5, the state Public Utility Commission will authorize a statewide certificate of franchise to any new applicant or incumbent provider whose franchise has expired. State law requires that existing cable providers fulfill their current municipal franchise agreements.

The Texas franchising statute, SB 5, under which two local cable providers now operate (Verizon and Millennium OneSource), was negotiated with fairness in

mind. Concerns of telecommunication providers, small cable providers and municipalities were addressed in this bill. Months of negotiation between municipalities and providers has led to a bill that, although not perfect, keeps a level playing field for providers and cities financially whole. If the FCC determines that changes need to be made in the way cable franchises are issued, the federal government should consider using Texas SB 5 as a template. Although local authority over customer service issues, rates and emergency alert systems are not included in the Texas bill, citizens will still receive public access channels, funding for PEG channels will continue; cities will retain some form of public right of way management, continued use I-nets to help with local emergency communications, traffic signalization and data transfer, libraries will still be able to offer free Internet service to citizens. Citizens will benefit from the additional competition by receiving a better variety of programming, service availability, lower rates and better customer service. This state law will work for all parties and should be taken for what it is; a good compromise for all parties involved that will benefit the end users.

Prior to Texas SB 5, at no time had the City of Fort Worth hindered, burdened, rejected or refused to grant a cable television franchise to a qualified applicant. All local franchises contain language expressing that the franchise was non-exclusive. Both citywide and limited area franchises were designed to provide a level playing field for all providers. Telecommunication companies wishing to provide video service in the City of Fort Worth were welcomed and dealt with fairly and in a timely manner.

The City of Fort Worth, Texas wishes to provide the best quality of cable television service, variety of content, and lowest rates possible to its citizens. We believe that competition will provide all of these services, but competition without social obligations would be detrimental to our citizens.

The City's Public, Educational and Governmental channels are funded by a per subscriber fee which cable providers pass through to subscriber. A survey conducted as part of our franchise renewal process reported that PEG channels were very important to local cable subscribers. Seventy-nine (79%) percent of survey responders knew of the government access channel, and more than fifty (50%) percent of those respondents watched the government access channel at least once a month. Educational and Public access channels received slightly lower percentages. As an example of the importance of the Public, Educational and Governmental Access channels to our community, fifty-three (53%) of respondents reported that local access channels were important in keeping them as cable customers, and one in five responders (21%) stated that they would be willing to pay more to keep PEG channels in operation. Institutional networks (I-nets) help bring emergency service to citizens, free Internet access at public libraries and schools, and speedy transfer of important data between public buildings.

If video providers hinder provision of these social obligations by requesting that federal laws such as 47 USC sections 531, 541 and 542, that deal with funding and community needs be changed, local communities will lose a uniquely local medium.

Respectfully submitted,  
City of Fort Worth, Texas

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